

REMARKS

Reconsideration and withdrawal of the rejections set forth in the final Office action mailed November 30, 2006 are respectfully requested in view of the amendments and arguments presented herein. This Amendment is accompanied by (i) a Request for Continued Examination under 37 C.F.R. §1.114 along with the associated fee, and (ii) a request for an extension of time in which to reply.

In view of the foregoing, the Applicant respectfully requests withdrawal of the finality of the Office action mailed November 30, 2006 and entry and consideration of the amendments set forth herein.

I. Status of the Claims

Claims 1-77 and 94 and 95 are now canceled.

Claims 78 and 83 are currently amended.

Claims 79-82, 84-93, and 96-99 are as previously presented.

II. Amendments to the Claims

Claim 78 has been amended in accordance with the recommendations provided by the Examiner. Specifically, claim 78 has been amended to include the limitation of claim 94 (now canceled) which states that said purifying is effective to essentially remove said polymeric impurities. Additionally, the claim has been amended to recite that the subject branched water-soluble polymer is provided in "essentially" rather than in "substantially" pure form.

Claim 83 has been amended to conform to the language of newly amended claim 78 from which it depends.

No new matter has been added to the claims by virtue of the amendments presented herein.

III. Rejections Under 35 U.S.C. §103

The Examiner has rejected claims 78-94 and 96 to 99 under 35 U.S.C. §103(a) as unpatentable over Martinez et al, U.S. Patent No. 5,643,575, in view of Yoakum (U.S. Patent No. 4,650,909), and *if necessary* in further view of Sartore et al., Veronese et al., or Abuchowski et al.

In the Office action mailed November 30, 2006, the Examiner stated, on page 5, last paragraph, that claim 78 would be free of the prior art if amended to incorporate the limitation of claim 94, and in the last line, change the term, "substantially" to – essentially--. The Examiner further indicated that claims properly dependent upon this claim would also be free of the prior art. With the exception of a provisional double patenting rejection (which has been addressed herein by the filing of a terminal disclaimer, as discussed in greater detail below), the only remaining outstanding rejection of the claims is the instant rejection under 35 U.S.C. §103(a), which it is submitted has been overcome by virtue of the amendments presented herein.

Specifically, claim 78 has been amended in accordance with the Examiner's suggestions, and is now the main independent claim pending in this application. The remaining claims are now dependent thereon. In view of the amendments to the claims, when considered in view of the Examiner's remarks, it is submitted that the Examiner's rejection of claims 78-94 and 96 to 99 under 35 U.S.C. §103(a) has been overcome, and that the pending claims are free of the prior art and are now in condition for allowance.

The Applicant reserves the right to pursue unclaimed subject matter in one or more continuing patent applications. Further, the Applicant reserves the right to rebut any presumption of prosecution history estoppel in view of the amendments to the claims provided herein.

IV. Double Patenting

The Examiner has provisionally rejected claims 78-94 and 96 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 96-109, 111, 112, and 114 to 133 of co-pending Application No. 10/119,546.

In response to this provisional rejection, enclosed herewith is a timely filed, executed terminal disclaimer in compliance with 37 CFR §1.321(c) or §1.321(d). By virtue of the terminal disclaimer submitted herewith, it is submitted that the rejection of the subject claims on the ground of nonstatutory obviousness-type double patenting has been overcome.

V. Conclusion

In view of the foregoing, the Applicant submits that all claims pending in the application patentably define over the cited art and meet all necessary requirements for patentability. Thus, it is submitted that the claims are now in condition for allowance. The prompt mailing of a Notice of Allowance is therefore earnestly solicited.

If a telephone conference would expedite the prosecution of the subject application, the Examiner is requested to call the undersigned at (650) 838-4406.

Respectfully submitted,



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on behalf of Nektar Therapeutics

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